



POLICE DEPARTMENT

June 10, 2015

MEMORANDUM FOR: Police Commissioner
Re: Police Officer Ishmael Bailey
Tax Registry No. 947713
110 Precinct
Disciplinary Case Nos. 2013-10985 & 2014-12174

The above-named member of the Department appeared before me on March 19, 2015,
charged with the following:

Disciplinary Case No. 2013-10985

1. Said Police Officer, Ishmael Bailey, while assigned to the 63rd Precinct, on or about November 24, 2013, while off duty, at a location in Roselle, New Jersey, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: by wrongfully engaging in a dispute with members of the Roselle New Jersey Police Department and by engaging in a physical altercation with a Roselle Police Department Officer.

P.G. 203-10 Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT

2. Said Police Officer, Ishmael Bailey, while assigned to the 63rd Precinct, on or about November 24, 2013, while off duty, at a location in Roselle, New Jersey, having been involved in an unusual police occurrence outside of New York City, did therefore neglect to report said incident to the Operations Unit, to wit: said officer was involved in a physical and verbal incident with members of the Roselle New Jersey Police Department and failed to notify the Operations Unit as required.

P.G. 212-32 Page 1, Note After Paragraph 2 – OFF-DUTY INCIDENT INVOLVING
UNIFORMED MEMBERS OF THE
SERVICE

Disciplinary Case No. 2014-12174

1. Said Police Officer Ishmael Bailey, while assigned to the 63rd Precinct, on or about June 10, 2014, while on duty, was absent from his assignment without permission or police necessity for approximately twenty (20) minutes, to wit: said Officer drove a New York City Police Department radio marked patrol vehicle to a vitamin store within the confines of the 61st Precinct and purchased personal items.

P.G. 203-05 Page 1, Paragraph 2 – PERFORMANCE ON DUTY –
GENERAL REGULATIONS

2. Said Police Officer Ishmael Bailey, assigned to the 63rd Precinct, on or about and between June 8, 2014 through June 10, 2014, failed to make accurate and complete entries in his Activity Log regarding his assignment and posts.

P.G. 212-08 Page 1, Paragraph 1 – ACTIVITY LOGS

3. Said Police Officer Ishmael Bailey, assigned to the 63rd Precinct, on or about and between June 8, 2014 through June 10, 2014, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Officer used Department vehicle No. 3517 to transport an unauthorized item, consisting of a reusable lunch bag.

P.G. 203-10 Page 1, Paragraph 5 – PROHIBITED CONDUCT

The Department was represented by Samuel Yee, Esq., Department Advocate's Office. Respondent was represented by John Tynan, Esq. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges in Disciplinary Case No. 2013-10985 and a plea of Guilty to the subject charges in Disciplinary Case No. 2014-12174. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2013-10985

Respondent is found Guilty as charged

Disciplinary Case No. 2014-12174

Respondent, having Pleaded Guilty, is found Guilty as charged.

FINDINGS AND ANALYSIS

Background

It is undisputed that at about 3:00 a.m. on November 24, 2013, Respondent's [REDACTED] Person A, was leaving a nightclub in Roselle, New Jersey. The club was closing for the night, and there was a crowd of approximately 300 people exiting. Police Officer John Lynn of the Roselle Police Department (RPD) was present to ensure that club patrons exited in an orderly manner. Respondent's Exhibit A is an aerial view of the club and its surroundings. (Tr. 18, 20)

Person A approached Lynn. She was visibly intoxicated and reported that someone had thrown a bottle at her. Lynn told her to calm down, and she became irate. A crowd started to form around her. Lynn instructed her to leave the area or she would be arrested for disorderly conduct. She started making derogatory remarks, calling Lynn a "white punk ass cop." She also told Lynn that her [REDACTED] was a police officer who was on the way there and would "straighten [his] ass out." (Tr. 19-20)

Respondent arrived and identified himself as a member of the Department. Lynn asked him to escort Person A away from the scene. Person A continued to act belligerently and scream derogatory remarks at Lynn. Person A's behavior was inciting the crowd, and Lynn decided to arrest her. When Lynn went to reach for Person A, Respondent put his hands out, initiating physical contact with Lynn that lasted two or three seconds. Lynn interpreted Respondent's actions as an attempt to obstruct Person A's arrest. Lynn and two backup officers had to struggle with Person A on the ground in order to apprehend her. Pepper spray was used. Once Person A was placed in a police vehicle, Lynn returned to Respondent to obtain his information and possibly arrest him for obstructing Person A's arrest. Lynn's supervisors advised him that they had already spoken with Respondent about the matter. (Tr. 21-25)

Specification No. 1

Respondent stands charged with engaging in conduct prejudicial to the good order, efficiency or discipline of the Department by wrongfully engaging in a dispute with RPD members and engaging in a physical altercation with Lynn.

Respondent admitted that he made physical contact with Lynn, but he proceeded to explain that the contact was inadvertent. According to Respondent, he was startled when Lynn reached over his shoulder to grab Person A. This caused him to stumble forward. To regain his balance, he spread his arms out. One of his hands unintentionally touched Lynn's chest area for a second. (Tr. 92-97) The Court finds Respondent's explanation self-serving.

Lynn's testimony lacked any sign of embellishment or exaggeration. While both he and his backup officer, Jacklyn Odom, described Respondent's motion as a push, Lynn made it clear that Respondent used such slight force that an immediate response was unnecessary. (Tr. 22, 55) The motion was also described as a push on police investigation reports prepared by Lynn, Odom, and a third RPD officer on the day of the incident. (Department Exhibits 1, 2, 3) These RPD members had no motive to perjure themselves before this tribunal or make false statements on their official department records. For this reason, the Court also credits Lynn's testimony that Respondent at one point displayed his shield, raised his arms in a brazen manner, and stated, "You're going to know who I am." (Tr. 24)

Accordingly, Respondent is found Guilty of this Specification.

Specification No. 2

Respondent stands charged with neglecting to report the incident with the RPD officers to the Operations Unit. While Person A was clearly the principal actor in the incident,

Respondent's name appeared in three police reports as someone who became physically involved in Person A's arrest. The RPD officers asked to see Respondent's driver's license, and Respondent understood that this was because they wanted to put his name on their reports. (Tr. 118-19) Even if Respondent had not played such an active role in the encounter, the notification requirement would have still been triggered since Patrol Guide Procedure 212-32 applies to situations where the off-duty member of service is merely a witness.

Accordingly, Respondent is found Guilty of this Specification.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on July 21, 2008. Information from his personnel file that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found guilty of engaging in a dispute with New Jersey police officers and engaging in a physical altercation with one of them while the officer was effecting the arrest of Respondent's [REDACTED]. He has also been found guilty of failing to notify the Operations Unit about the incident. In addition, he has pled guilty to, while on duty, driving a Department vehicle to a vitamin store [REDACTED] and purchasing personal items, transporting an unauthorized item (a reusable lunch bag) in the car, and failing to make accurate and complete Activity Log entries for a two-day period. As a result of the pending charges against him, Respondent was transferred to a different borough, which has made his daily commute much longer. He was assigned a foot post for his first three months in his new

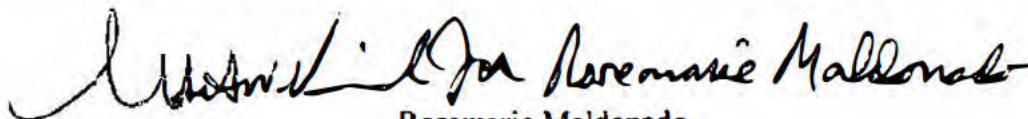
command, and his request for time off to play with the Department football team was denied.

(Tr, 102-04, 108-09, 111)

The Assistant Department Advocate recommended a penalty of 25 vacation days. This recommendation seems reasonable, given that in 2010 a five-year police officer with no prior disciplinary record forfeited 25 vacation days for virtually identical misconduct. (*Case No. 84482/08* (Nov. 11, 2010): a five-year police officer with no prior disciplinary record negotiated a penalty of 25 vacation days for, while off duty, touching the arm of an on-duty officer as the officer was arresting her fiancé. In addition, she allowed the fiancé to repeatedly use her Department-issued MetroCard.)

Based on the foregoing, it is recommended that Respondent forfeit a penalty of 25 vacation days.

Respectfully submitted,



Rosemarie Maldonado
Deputy Commissioner Trials

APPROVED

SEP 02 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ISHMAEL BAILEY
TAX REGISTRY NO. 947713
DISCIPLINARY CASE NOS. 2013-10985 & 2014-12174

Respondent received an overall rating of 3.0 "Competent" on his last three annual performance evaluations. [REDACTED]

[REDACTED] He has been on Level II Discipline Monitoring since June 2014. He has no prior formal disciplinary record.

For your consideration.



Rosemarie Maldonado
Deputy Commissioner Trials